

North Smithfield Zoning Board of Review

Meeting Minutes of February 20, 2007

The North Smithfield Zoning Board of Review met on Tuesday, February 20, 2007, at 7:00 PM at Primrose Fire Station, 1470 Providence Pike, North Smithfield, Rhode Island.

Call to Order: The Chair called the meeting to order at 7:00 pm.

I. Call of the Roll: Chair Stephen Kearns called the roll of the members. Present: Stephen Kearns, Vincent Marcantonio, Guy Denizard, Steven Scarpelli, Dean Naylor, and Mario DiNunzio. Absent: William Juhr. Also present were the Assistant Solicitor, Robert Rossi, Esq.; Robert Benoit, Building and Zoning Official; and a court stenographer from Allied Court Reporters.

The Chair reviewed procedures of the board for all present. In the absence of William Juhr, first alternate Mario DiNunzio will be voting in any decisions for the evening.

II. Ratification of Decision granting Special Use Permit to New England Self Storage – January 2, 2007.

The Board is still waiting to approve the decision of January 2, 2007 for a Special Use Permit for New England Self Storage, pending verification of the DEM permit that storage of gasoline on the site is allowed. Mr. Benoit informed the Board that the he has requested a

copy of the DEM permit from the applicant, but has not yet received it.

The Chair also stated that the applicant will need to abide by the stipulations of the decision that no additional signage will be placed at the site, and all vehicles will be stored in the rear of the building.

III. Approval of Minutes – January 16, 2007.

Mr. Marcantonio made a motion to approve the minutes of the January 16, 2007 meeting. Mr. Scarpelli seconded the motion, with all in favor.

IV. Leon Laliberte, request for bond release/drainage system, 229 Quaker Highway, Plat 1, Lot 16.

John Mancini, attorney for Leon Laliberte addressed the Board to request the release of a cash bond, in the amount of \$20,000. The bond had initially been placed as a stipulation to a Zoning Board of Review decision, dated October 20, 2004. The stipulation in the decision stated: “The petitioner shall be required to install the drainage system including the galley system as originally designed by the petitioner’s engineer and approved by the Planning Board in 1999. The petitioner shall, upon receipt of a Temporary Certificate of Occupancy, place a performance bond in the amount of \$20,000 in favor of the Town of North Smithfield for the installation of the drainage system and galley system. Beta Group shall supervise and certify the installation of the required drainage system components in

order for the petitioner to receive a permanent Certificate of Occupancy.”

Mr. Mancini stated that the bond should be released because the drainage system has been installed according to the stipulation. He entered the following exhibits:

P1) Letter dated 10/4/06 from Beta Group Engineering

P2) Memorandum from John Mancini to the Zoning Board of Review

P3) Letter dated 6/27/06 from Nick Cristofori, Sanitary Engineer for the Rhode Island DEM

On December 21, 2006, the Planning Board recommended that \$15,000 of the bond should be released, with the remaining \$5000 to be held as a maintenance bond to ensure that inspection and maintenance of the system is performed in accordance with the Rhode Island Stormwater Design and Installation Manual. Mr. Mancini stated that the Planning Board does not have the jurisdiction to hold a maintenance bond, and referred to his memorandum (P2) to support that the entire \$20,000 bond be released.

The Chair requested that the applicant get a copy of a DEM inspection of the completed drainage system, as well as an engineer-stamped as-built plan of the drainage system. Mr. Mancini stated that he would try to obtain a DEM inspection of the system and asked if they would accept a letter from the DEM stating that they do not feel the

need to complete the inspection, if that turns out to be the case. The Chair stated that he would accept a good faith effort in trying to get the inspection from the DEM. Mr. Mancini also agreed to get engineer-stamped as-built survey of the drainage system.

The Chair continued the hearing to March 6, 2006.

V. Continued application of Rita A. Turcotte, requesting a dimensional variance from section 5.5, subsection 5.51. Locus is Rue de St. Jude, Plat 17, Lot 184.

Assistant Town Solicitor Bob Rossi asked Ms. Turcotte if the lot in question (AP 17, Lot 184) was ever part of Lots 2, 3, & 19, owned together by Gloria Turcotte. Ms. Turcotte answered that she believes they were.

Mr. Rossi stated that he has reviewed the Land Evidence Records of the Town of North Smithfield, and found the following information:

“This application concerns two former lots know as Tax Assessor Plat 17, Lots 184 and 185. These lots are also known as recorded Lots 19 & 3 on a recorded Plat named Re-Plot of Beau Reve Estate. Those lots are contiguous and abut each other. There is another abutting lot that is also contiguous in line with these two lots. That lot is known as Tax Assessor’s Lot 183 and is noted as lot number 2 on the recorded plat. As of November 29, 2000, all of these lots (183,

184, & 185, also known as Lots 19, 3, & 2) were owned together at the same time by a single owner, Gloria Y. Turcotte, Trustee. This is shown by a deed dated November 29, 2000 and recorded November 29, 2000 in Book 207, Page 436. The deed description shows a number of lots, including Lots 2, 3 & 19, all forming a part of the Re-Plot of Beau Reve Estate Plat. Because those three lots are in an RS-40 zone, they were all undersized and nonconforming. As a result, and since the lots were contiguous with each other, they fell within the provisions of Section 4.2.1 of the zoning ordinance and merged into one single lot. The three lots, for all purposes, ceased to exist. They merged into one lot with that deed, and possibly prior in time.

Even though the three lots merged into one, Gloria Turcotte, Trustee, signed two deeds in 2005; one each conveying recorded Lot 19 and 3 (formerly Assessor Lots 185 and 184) to Rita Turcotte, the applicant. This conveyance was made of lots that no longer existed, yet the deeds were recorded on March 9, 2005. The deeds were not dated, but appear to be signed in March 2005. The effect of the conveyance of two lots that no longer existed and had merged was a resubdivision of a merged lot, in violation of section 4.2.1. Assessor Lot 183 (recorded Lot 2) remained in Gloria Turcotte. Almost a year after the recording of these deeds, an application for an administrative subdivision was made for the two lots that legally do not and did not exist. It seems that an illegal subdivision had already occurred by severing Lot 2 (183) from the other two, and then a

request for a subdivision for the two lots conveyed to the applicant was made.”

Mr. Rossi cited for the record a Rhode Island Supreme Court case that struck down and invalidated just such an attempt to record deeds conveying portions of land without proper Planning Board approval for subdivision. [Petrone v. Town of Foster 769 A.2d 591 (2001).] Mr. Rossi stated that the deeds are not binding on this board, the Tax Assessor, or the town in general, and in fact, appear to circumvent the Zoning Ordinance.

Mr. Rossi stated that he believes the administrative subdivision is in violation of Section 4.2.1 of the Zoning Ordinance, because it subdivides a merged nonconforming lot and the subdivision does not include the entire merged lot to include Lot 2 (183). Mr. Rossi also stated that it is his opinion that the Zoning Board has no authority under the Zoning Ordinance to grant a dimensional variance to a subdivided previously merged lot that is nonconforming and undersized, under section 4.2.1.

Ms. Turcotte responded by stating that her original petition, in September 2006, was to appeal the Zoning Official’s decision under the provisions of Section 8.4 of the North Smithfield Zoning Ordinance. Ms. Turcotte based her appeal on the definition of a lot as it is stated in the North Smithfield Zoning Ordinance. In the zoning ordinance, a lot is defined as having frontage on an improved road.

Ms. Turcotte testified that lots 184 and 185 had no frontage on any type of road (improved or otherwise) at the time of conveyance to her from her mother. Therefore, the applicant testified, she was not challenging the merger of lots, but rather challenging that the lots in question do not meet the definition of having frontage on an improved road.

Ms. Turcotte testified that she had filed the appeal on the advice of the Town Planner and Zoning Official. She testified that an administrative subdivision had been granted by the Planning Department but was not being recognized by the tax official due to the merged lots provision. At a previous Zoning Board of Review meeting, in October 2006, Ms. Turcotte was advised by former Assistant Solicitor Nadeau to amend the present filing to include dimensional release for a buildable lot. Ms. Turcotte stated that she has done everything that town officials have advised her to do regarding this application. She questioned whether the issues being brought up concerning the merger of lots would still be issues if Lot 183 did not belong to her mother.

The Chair stated that his reading of the merger ordinance is to make room on lots to install a DEM-approved septic system, instead of squeezing a system into the area that exists. Mr. Rossi disagreed with Ms. Turcotte's argument of the definition of a lot, stating that the definition is not included to circumvent a merger ordinance. It is included in the ordinance as part of the requirements of having a lot,

but doesn't define a lot. Ms. Turcotte responded that the definition applies throughout the ordinance; therefore the transfer of lots is legitimate. She stated that the administrative subdivision has been recorded, so she should not be penalized. She has gone through the appropriate channels, and it has been 2 ½ years since the transfer of the land. She asked if there was a statute of limitations on what could be done and asked if the town was able to revoke a subdivision. Mr. Rossi stated that the subdivision is at best, conditional.

Ms. Turcotte stated that she has a house built on 4 merged lots across the street from Lot 184. She stated that those lots were merged and an administrative subdivision was created according to the same process she took with this application. The only difference is that the other subdivision resulted in a lot which was large enough to not require a dimensional variance.

The Chair responded that he understands the administrative subdivision has been created by the Town Planner, but that Mr. Rossi's point is that if the subdivision created was an illegal one, the Zoning Board does not want to grant a variance on that lot and be party to what may be an illegal subdivision. Ms. Turcotte asked if the Zoning Board was revoking the administrative subdivision, and if it had the jurisdiction to do so. She also asked the Board to clarify what they were voting on. Mr. Rossi stated that the Board can vote on the dimensional variance application. Ms. Turcotte stated that the decision should be based on the testimony of their previous meeting

(February 6, 2007). The Chair stated that they now have information on record that they must consider in their decision and asked the Board to give a decision based on the Zoning Ordinance criteria. Mr. Rossi advised the Board that they cannot ignore a violation of the merger ordinance in this application.

Mr. Philip Godfrin addressed the Board for the applicant, stating that the original request was an appeal of the Zoning Official's letter, but the applicant was told to change her request by the former Assistant Town Solicitor. He stated that the Board is putting an unfair burden on the applicant and stated that after approximately 6 months, despite doing what she was advised, Ms. Turcotte is now at the same point she was when she started. Ms. Turcotte added that she would not do anything with the property in question that would diminish her mother's abutting property.

Mr. Marcantonio asked if the granted administrative subdivision was a violation of the rules of subdivisions. Mr. Rossi stated that it is a violation of the lot merger ordinance, and added that any administrative subdivision is conditional on Zoning Board approval. Ms. Turcotte stated that she was not advised of this at the time of the administrative subdivision. Mr. Rossi stated that the law is in the ordinance and as such, the lot is not an existing subdivision without Zoning Board approval. He again stated that he feels this is an illegal subdivision and advised the Board to follow the ordinance.

The Chair apologized to Ms. Turcotte for her trouble in this applicant, but stated that the Zoning Board has no jurisdiction to grant variances on a possibly illegal subdivision.

The Chair stated that in the application of Rita A. Turcotte, requesting a dimensional variance from section 5.5, subsection 5.51, located at Rue de St. Jude, Plat 17, Lot 184, for an undersized lot (20,970 sq. ft. in a RS-40 zone), he finds the following:

- 1) The applicant followed what she thought were the proper steps to get to this point, by creating a subdivision, then applying for a dimensional variance.**
- 2) The Zoning Board of Review has been told by attorney Robert Rossi, Assistant Town Solicitor, that the subdivision should have been conditional, and as such, may be an illegal subdivision.**

Based on #2, the Chair made a motion to deny the application, because the Zoning Board cannot grant the dimensional variance due to other factors in the law. Mr. Rossi advised the Board to add to the findings of fact. The Chair added the following:

- 3) If the subdivision is legally and properly designed and recorded, evidence shows that the applicant is seeking relief due to the unique characteristics of the subject land (the way the subdivision was put together).**
- 4) The relief is not being requested for financial gain.**

Mr. Marcantonio asked if the issue of the illegal subdivision was straightened out, could the property be resubdivided to obtain better dimensions for a buildable lot. Mr. Rossi responded that his reading of the merger ordinance would prohibit that, since the purpose of the ordinance was to result in appropriately sized lots. Ms. Turcotte responded that the merger ordinance was added to the Zoning Ordinance in 1973, the house on Lot 183 was built in 1954, therefore it is a preexisting nonconforming lot.

The Chair made a motion to deny the application, based on the fact that the subdivision may be an illegal subdivision. Mr. Scarpelli seconded the motion. Vote was as follows: AYE: Mr. Kearns, Mr. Marcantonio, Mr. Denizard, Mr. DiNunzio, Mr. Scarpelli. The dimensional variance was denied, by a vote of 5-0.

The Chair called a recess at 8:32 p.m., and called the meeting back to order at 8:40 p.m.

VI. Continued application of Jeffrey Caron, requesting to open and operate an automotive light repair garage, which will require a special use permit, per section 5.4.7, subsection 7-A. Locus is 473 St. Paul Street, Plat 2, Lot 64.

Attorney Lloyd Gariepy addressed the Board for the applicant, CPR Auto, Inc. In response to requests from the previous meeting, Mr.

Gariepy entered the following exhibits into the record:

P6) Summary of telephone conversation between Mr. Gariepy and Robert Nero, an environmental scientist for the Rhode Island DEM.

P7) A letter from Brian Gartland, North Smithfield Fire Marshal, stating that he has completed a site inspection and found the building to be in compliance with the Rhode Island State Fire Code.

Mr. Gariepy also showed the Board photographs of the left side elevation of the building and the parking lot.

Other than the exhibits, Mr. Gariepy provided no additional testimony.

The Chair asked Mr. Gariepy if he was aware that the property is located in a groundwater recharge area. Mr. Gariepy stated that he was made aware of this fact in a February 6, 2007 phone call from Mr. Rossi. The Chair stated that under section 6.19 of the Zoning Ordinance, auto repair businesses are listed under prohibited uses in groundwater aquifer zones. The North Smithfield Comprehensive Plan, on map G4, locates the property in question in a groundwater recharge area.

Mr. Gariepy stated that in the ordinance, the word “development” is used, and calls for documentation usually only needed in new development. Since this building is not new development, this section of the ordinance may not apply to this application. Mr. Gariepy also stated that section 6.19.7 of the ordinance provides for

the Zoning Board to consider a special use if they feel water quality will not be affected by the proposed use.

The Chair asked if the applicant had sought out an alternate site for their business since they found out the proposed site is located in a water recharge area. Mr. Gariepy replied that they had looked into other sites, but still feel this site is the most suited to their business needs.

Mr. Marcantonio stated that in the application of Jeffrey Caron, requesting to open and operate an automotive light repair garage, which will require a special use permit, per section 5.4.7, subsection 7-A, located at 473 St. Paul Street, Plat 2, Lot 64, he finds the following:

- 1) The property is located in a groundwater recharge area, as identified on map G4 in the North Smithfield Comprehensive Plan.**
- 2) The use is prohibited, according to the North Smithfield Zoning Ordinance, section 6.19.5, subsection 9.**

Based on these findings, Mr. Marcantonio made a motion to deny the application. Mr. Denizard seconded the motion. Vote was as follows:

AYE: Mr. Kearns, Mr. Marcantonio, Mr. Denizard, Mr. DiNunzio, Mr. Scarpelli. The special use permit was denied, by a vote of 5-0.

VI. Zoning Board Issues and Concerns

The Chair requested that all members of the Board receive a complete copy of the North Smithfield Comprehensive Plan as revised. Mr. Benoit informed the Board that he had requested copies from the Town Planner, but was not able to obtain them. The plan has not been approved by the state, so the Planner does not want to distribute copies until this approval is complete. The Board suggested asking the Town Administrator for copies of the comprehensive plan, or to request copies from the Town Council if money is needed to print the copies.

Mr. Kearns made a motion to adjourn at 9:19 p.m., seconded by Mr. Scarpelli, with all in favor.